



Broadcasting Notice of Consultation CRTC 2012-368

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Ottawa, 6 July 2012

Call for comments on exempting from licensing pay television and specialty Category B services with a limited subscriber base, and on amendments to the *Exemption order respecting third-language television programming undertakings*

The Commission calls for comments on a proposal to exempt from licensing pay television and specialty Category B services with a limited subscriber base, and on a proposed exemption order for such services.

In addition, the Commission calls for comments on proposed amendments to the Exemption order respecting third-language television programming undertakings. These amendments would permit services that offer 40% or more of their programming in any one of the Cantonese, Greek, Hindi, Italian, Mandarin or Spanish languages to be eligible for exemption.

*The deadline for filing comments in regard to the above is **7 August 2012**. Parties may file replies to matters raised in the initial comments. The deadline for the filing of replies is **17 August 2012**.*

Introduction

1. In the present notice of consultation, the Commission invites comments on the following:
 - a proposal to exempt from licensing pay television and specialty Category B services with a limited subscriber base, and an exemption order to that effect; and
 - proposed amendments to the *Exemption order respecting third-language television programming undertakings* that would permit services that offer 40% or more of their programming in any one of the Cantonese, Greek, Hindi, Italian, Mandarin or Spanish languages to be eligible for exemption.

Proposal to exempt from licensing pay television and specialty Category B services with a limited subscriber base

Background

2. In Public Notice 2000-171, the Commission adopted an open-entry approach to the licensing of Category 2 (now Category B)¹ services so as to encourage the development of Canadian programming options that would serve the needs and interests of the broadest possible range of viewers. Under this approach, the Commission currently licenses as Category B services all pay television and specialty services that:
 - do not compete directly with Category A or Category C services;
 - meet Canadian ownership requirements; and
 - accept standard requirements.
3. Since adopting this approach, the Commission has received numerous applications for broadcasting licences to operate new Category B services, most of which have been approved by the Commission. Despite the large number of applications that have been approved, the majority of the services authorized have yet to launch. Furthermore, many that have launched have relatively limited subscriber bases; in some cases, launched Category B services have ceased operating.
4. In the Commission's view, the current licensing process for Category B services is inefficient and needlessly time-consuming. In the interest of improving the process of authorizing such services, the Commission seeks comment on the appropriateness of exempting from licensing pay television and specialty Category B services with a limited subscriber base that meet certain criteria. Specific issues in regard to the proposal to exempt such services from licensing are discussed below, and relate to the following:
 - the appropriateness of exempting such services from licensing;

¹ In regard to pay television and specialty services, the Commission distinguishes between Category A, Category B and Category C licensed services. Category A services (formerly known as Canadian analog and Category 1 pay television and specialty services) are Canadian pay television and specialty services with access rights (i.e., broadcasting distribution undertakings are required to offer these services to subscribers, although specific terms of distribution may still be negotiated), each of which offers programming from its own individual protected genre (i.e., only one service is permitted to operate in each genre). Category B services are Canadian pay television and specialty services that do not compete with Category A services. They have minimal regulatory requirements, but also have no access rights. Category C services are services operating in particular genres that have been opened to competition (i.e., multiple services may all offer the same genre of programming). For the purposes of the present notice, the term "Category B service" encompasses both Category 2 digital services and Category B services, unless a distinction between the two is necessary.

- the number of subscribers served by such services; and
- the nature of service definitions for such services.

Appropriateness of exempting from licensing pay television and specialty Category B services with a limited subscriber base

5. The exemption of pay television and specialty Category B services with a limited subscriber base would require the issuance of a new exemption order. In this regard, the Commission notes that its authority to exempt classes of broadcasting undertakings is set out in section 9(4) of the *Broadcasting Act* (the Act), which states the following:

The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) [of the Act].

6. As per the above-noted section of the Act, the Commission considers that it may not be necessary to license pay television and specialty Category B services that serve a number of subscribers under a certain threshold and that operate under an approved nature of service, as discussed below, in order to implement the policy objectives of the Act. In the Commission's view, such exempt services may continue to contribute to the quality and diversity of programming available to Canadians and the broadcasting system as exempt undertakings.
7. A proposed exemption order setting out potential terms and conditions for such exempt undertakings is set out in Appendix 1 to the present notice. In addition to the terms and conditions discussed in detail below, the proposed exemption order also contains provisions normally applied to other licensed and exempt programming undertakings, such as those relating to undue preference, accessibility and the loudness of commercial messages. The Commission notes that this exemption order is being proposed in the interest of regulatory and administrative simplicity, and that the expectations and encouragements set out in the appendices to Broadcasting Regulatory Policy 2010-786-1 would continue to apply to any exempt Category B service.

Number of subscribers

8. The Commission proposes to exempt existing Category B services and new services that would otherwise be licensable as Category B services, where such services, in addition to adhering to a nature of service definition as discussed in the next section, serve no more than a set maximum number of subscribers.

9. The majority of Category B services in operation have a relatively small number of subscribers, which results in generally lower revenues. This fact coupled with on-going regulatory requirements to modify and renew licences, submit program logs, etc., can create significant financial and regulatory burdens for those services. On the other hand, there are a significant number of large and profitable Category B services for which, in the Commission's view, licensing remains appropriate. In this regard, the Commission notes that, in the context of its group-based approach to the licensing of private television services (see Broadcasting Regulatory Policy 2010-167), it distinguished between large Category B services (i.e., those that serve one million or more subscribers) and Category B services with a limited subscriber base (i.e., those that serve fewer than one million subscribers) in setting out its determinations on the imposition of a Canadian programming expenditure requirement.
10. On a preliminary basis, the Commission has considered three potential subscriber thresholds for the new proposed class of exempt undertakings (the Commission notes that other thresholds are also possible, and that it is open to the consideration of different thresholds for the English-language and French-language markets):
 - 20,000 subscribers, which could capture 42 Category B services currently in operation;
 - 100,000 subscribers, which could capture 48 Category B services currently in operation; and
 - 200,000 subscribers, which could capture 50 Category B services currently in operation.
11. An existing Category 2/Category B service for which the number of subscribers served, including all subscribers from any Canadian broadcasting distribution undertaking (BDU) that offers the service, is less than the threshold level retained by the Commission for a period of three consecutive months would be permitted to request the revocation of its broadcasting licence, provided that it meets the other terms and conditions of exemption, such as the nature of service requirement discussed in the next section. Any new Category B service, on the other hand, could immediately begin operations under the exemption order, provided that it too meets the terms and conditions of that order.
12. A service would be permitted to continue operating as an exempt undertaking under the proposed exemption order until it exceeds the maximum number of subscribers set out in the order. At that time, the service would be required to apply for a broadcasting licence, following the standard application procedure. As part of the licensing process, the service would be able to request changes to its nature of service, as well as other conditions of licence, if it so desires. The Commission notes that the service in question would continue to operate under the exemption order until the Commission rendered its determination on the application.

13. In order to ensure that an exempt undertaking having close to the threshold level of subscribers is not unnecessarily required to obtain a licence, the Commission also proposes to permit undertakings, once exempt, to remain eligible for exemption until they exceed the subscriber threshold by a margin of more than 5% (for example, if the threshold were set at 100,000 subscribers, the service in question would remain eligible for exemption until it passed 105,000 subscribers). Inversely, currently licensed undertakings would not become eligible for exemption unless the total number of subscribers served by the undertaking falls below the threshold (for the example above, 100,000 subscribers). The Commission notes that it has included similar provisions in previous exemption orders (see, among others, *Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, set out in the appendix to Broadcasting Order 2009-544).

Nature of service definition

14. Further to the above, the Commission proposes to exempt existing Category 2/Category B services and new services that would otherwise be licensable as Category B services, where such services, in addition to the criterion discussed above, abide by one of the nature of service definitions already approved by the Commission for either a Category 2 digital specialty service or a Category B service.
15. The nature of service definition of a pay television or specialty service consists of three elements: a) a narrative description of the programming that the service offers, b) a list of program categories from which the licensee may draw programming for the service, and c) any limits placed on those program categories. The Commission uses this nature of service definition to ensure that a Category B service does not compete directly with a Category A or a Category C service, and to assess whether new non-Canadian services should be eligible for distribution in Canada.
16. Since 2000, the Commission has issued more than 1,000 broadcasting decisions authorizing Category 2/Category B services; all of these decisions are accessible on the Commission's website. Under the current proposal, in order to be eligible for exemption, a new or existing service would be required to select an approved nature of service definition set out in one of the above-noted broadcasting decisions and specify for the Commission the decision in which the selected nature of service was approved.
17. An existing service, for example, could select the nature of service definition already in place for that service, or one authorized for any other approved service. The Commission notes, however, that the exempt undertaking would not be permitted to include elements of the nature of service definitions (i.e., the narrative description, program categories, and limits placed on program categories) from more than one approved Category B service. In addition, although the exempt undertaking would not be permitted to modify any elements of the nature of service definition as approved in the originating decision, it would be permitted to select a different nature

of service definition from any approved Category B service at any time, provided that it informs the Commission prior to making this change.

Amendments to the *Exemption order respecting certain third-language television undertakings*

18. In the *Exemption order respecting third-language television programming undertakings*, set out in the appendix to Broadcasting Public Notice 2007-33, the Commission exempted from licensing certain television programming undertakings that provide programming services in third-languages to BDUs for distribution on a digital basis. Specifically, that order applies to services for which less than 40% of the programming broadcast by that undertaking in each calendar week is in any of the languages of Cantonese, Greek, Hindi, Italian, Mandarin or Spanish.
19. The Commission notes that a significant number of applications received for new Category B services are for third-language services. While a number of such services are already eligible for exemption under the above-noted order, those that broadcast 40% or more of their programming in any of the above-noted languages are not eligible for exemption. In the Commission's view, it may be appropriate to exempt such services from licensing, and to do so under the existing exemption order rather than under the proposed exemption order for pay television and specialty Category B services with a limited subscriber base. Accordingly, the Commission seeks comment on amendments to the *Exemption order respecting third-language television programming undertakings* that would eliminate this exception. These amendments are set out in Appendix 2.
20. The Commission also proposes an amendment to that exemption order so as to add a provision relating to undue preference that is comparable to that applied to other programming services. This proposed amendment is also set out in Appendix 2. Consistent with its approach to other programming services set out in Broadcasting Regulatory Policy 2012-273, the Commission also proposes adding requirements to ensure that commercial messages and regular programming are broadcast at an even volume on these exempt services.
21. As noted above in regard to other Category B services, the Commission's authority to exempt third-language television undertakings is set out in section 9(4) of the Act. Specifically, the Commission may make amendments to the current exemption order so as to exempt third-language television undertakings regardless of the percentage of programming in any of the Cantonese, Greek, Hindi, Italian, Mandarin or Spanish languages, if it is satisfied that it is not necessary to license such undertakings in order for them to contribute materially to the implementation of the policy objectives of the Act.

Potential amendments to the *Broadcasting Distribution Regulations*

22. The *Broadcasting Distribution Regulations* (the Regulations) contain certain protections for Category B services, including those that are not owned by or

affiliated with a BDU. The Regulations also include protections for Category A services that provide programming in the Cantonese, Greek, Hindi, Italian, Mandarin and Spanish languages. Should the Commission choose to exempt Category B services and/or amend the *Exemption order pertaining to third-language television undertakings*, it would amend the Regulations to ensure that the current provisions protecting Category A and Category B services described above would apply in the same way to exempt services as they currently apply to licensed Category B services. This would include amending the Regulations to ensure that the current provision regarding the distribution of related exempt undertakings, set out in section 19(5) of the Regulations, would not apply, while maintaining the distribution rules set out in sections 19(3), 19(4) and 27 of the Regulations. The Commission expects that such changes to the Regulations would come into effect before new or existing services would be eligible to operate under either the new proposed exemption order for pay television and specialty Category B services with a limited subscriber base set out in Appendix 1 to the present notice, or the amended exemption order respecting certain third-language television undertakings set out in Appendix 2.

Call for comments

23. In light of the above, the Commission calls for comments on the following in regard to the proposed exemption of Category B services:
- the appropriateness of exempting from licensing pay television and specialty Category B services with a limited subscriber base;
 - its proposal to exempt from licensing, through an exemption order, pay television and specialty Category B services with a limited subscriber base that, at the same time:
 - operate under an approved nature of service definition, and
 - serve a maximum number of subscribers, such as those proposed in paragraph 10 of this notice or some other appropriate threshold; and
 - its proposed exemption order for pay television and specialty Category B services with a limited subscriber base entitled *Exemption order respecting small pay television or specialty programming undertakings that do not compete directly with specialty Category A or Category C services*, set out in Appendix 1 to the present notice.
24. Furthermore, the Commission calls for comments on its proposal to exempt from licensing, through amendments to the *Exemption order respecting third-language television programming undertakings*, third-language television undertakings where the programming broadcast in each calendar week is 40% or more in any of the languages of Cantonese, Greek, Hindi, Italian, Mandarin or Spanish. It also calls for comments on amendments relating to undue preference in regard to such services, the loudness of commercial messages, and the filing of information with the

Commission. The proposed amendments to that exemption order, as well as certain housekeeping amendments, are set out in bold in Appendix 2.

Procedure

25. The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
26. The Commission will accept comments that it receives on or before **7 August 2012**. Parties may file replies to matters raised in the initial comments. The deadline for the filing of replies is **17 August 2012**.
27. In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.
28. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.
29. Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

by using the

[\[Intervention/comment/answer form\]](#)

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax at

819-994-0218

30. Submissions longer than five pages should include a summary.
31. Each paragraph of the submission should be numbered. In addition, where the intervention is filed by electronic means, the line *****End of document***** should be

entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

Important notice

32. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
33. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
34. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
35. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
36. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

37. A list of all interventions will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.
38. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec
H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

360 Main Street
Suite 970
Winnipeg, Manitoba
R3C 3Z3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

100 – 4th Avenue South-West
Suite 403
Calgary, Alberta
T2P 3N2

Tel.: 403-292-6660

Fax: 403-292-6686

858 Beatty Street

Suite 290

Vancouver, British Columbia

V6B 1C1

Tel.: 604-666-2111

Fax: 604-666-8322

Secretary General

Related documents

- *Amendments to various regulations and an exemption order to implement measures to control the loudness of commercial messages*, Broadcasting Regulatory Policy CRTC 2012-273 and Broadcasting Order CRTC 2012-274, 8 May 2012
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Exemption order for terrestrial broadcasting distribution undertakings service fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *Exemption order respecting certain third-language television undertakings*, Broadcasting Public Notice CRTC 2007-33, 30 March 2007
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000

Appendix 1 to Broadcasting Notice of Consultation CRTC 2012-368

Proposed exemption order

Exemption order respecting small pay television or specialty programming undertakings that do not compete directly with specialty Category A or Category C services

Purpose

The purpose of these small pay television or specialty programming undertakings is to provide programming services that operate under an approved nature of service for distribution on a digital basis.

Description

1. For the purpose of this order, the terms “advertising material,” “broadcast year” and “evening broadcast period” have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*. The terms “advertising material,” “Canadian program,” “program” and “program delivery agreement” have the same meaning as that set out in the *Specialty Services Regulations, 1990*. For the purpose of this order, any small pay television or specialty programming undertaking exempt under this order shall be designated as a Category B service as defined in the *Broadcasting Distribution Regulations*.
2. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament or any direction to the Commission by the Governor in Council.
3. The undertaking does not enter into a program delivery agreement with a person who is a non-Canadian as defined in section 1 of the *Direction to the CRTC (Ineligibility of Non-Canadians)*.
4. The undertaking meets all technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
5. The undertaking provides its programming service only to broadcasting distribution undertakings (BDUs) that distribute the service to subscribers solely on a digital basis. The total number of such subscribers served by the undertaking, collectively by all BDUs, does not exceed [number to be determined]. Once exempt, the undertaking does not have more than [number to be determined + 5% of that number] subscribers for a period of more than three consecutive months.
6. In regard to the filing of information with the Commission:

- a) The undertaking files information with the Commission specifying: the name of the service provider, the name under which the service operates, the service's contact information, including mailing address, telephone number, fax number, email address, and website, and the operating language(s) of the service. In the case of a new undertaking, the above information is filed with the Commission when the undertaking is ready to commence operations.
 - b) The undertaking also files with the Commission an attestation that it will adhere to the complete nature of service of a Category 2 or Category B service approved by the Commission. This attestation must identify the Commission decision in which the complete nature of service was approved. "Complete nature of service" means any narrative description, list of programming categories from which the undertaking may draw programming and any limitations on programming from these categories, all of which are included in a single Commission decision.
 - c) The undertaking updates with the Commission the information and attestation required under (a) and (b) above prior to making any change.
 - d) On 30 September of each year, the undertaking submits to the Commission the total number of subscribers served by the undertaking, collectively by all broadcasting distribution undertakings.
7. In regard to Canadian content:
- a) Not less than 35% of all programs broadcast in each broadcast year and in the evening broadcast period qualify as a Canadian program.
 - b) Notwithstanding (a) above, if the undertaking is in its first year of operation, it devotes not less than 15% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
 - c) Notwithstanding (a) above, if the undertaking is in its second year of operation, it devotes not less than 25% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
8. The undertaking does not broadcast more than twelve (12) minutes of advertising material during each clock hour.
9. The undertaking's programming complies with sections 3, 3.1 and 6 of the *Specialty Services Regulations, 1990*.
10. The undertaking's programming complies with section D.3 (Adult programming) of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as well as with the *Equitable Portrayal Code*, the *Broadcast code for advertising to children*, and the *Violence Code*, as amended from time to time and approved by the Commission.

11. The undertaking captions 100% of the English- and French-language programs broadcast over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
12. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, as subsequently amended by the Commission,² the undertaking:
 - a) ensures that advertising, sponsorship messages and promos in the English and French languages are closed captioned by no later than the fourth year of the licence term;
 - b) adheres to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission; and
 - c) implements a monitoring system ensuring that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. “Original form” means, at a minimum, that the captioning provided by the undertaking reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
13. The undertaking provides audio description for all the key elements of Canadian information programs, including news programming. For the purposes of this provision, “audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.
14. The undertaking does not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
15. The undertaking ensures that every commercial message that it broadcasts complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

² See *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Implementation of the Accessibility Policy and other matters*, Broadcasting Regulatory Policy CRTC 2009-562-1, 18 June 2010; *Implementation of the Accessibility Policy with respect to new Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010.

16. The undertaking retains a clear and intelligible audio-visual recording of all of its programming for a period of four weeks following the date of broadcast, and provides this to the Commission on such terms as the Commission may request.
17. At the request of the Commission, the undertaking provides the Commission with a response to any inquiry that relates to the undertaking.

Appendix 2 to Broadcasting Notice of Consultation CRTC 2012-368

Proposed amended exemption order

The *Exemption order respecting certain third-language television undertakings*, which is set out in the appendix to *Exemption order respecting certain third-language television undertakings*, Broadcasting Public Notice CRTC 2007-33, 30 March 2007 would be replaced with the following (additions and deletions, as well as certain linguistic adjustments, are indicated in bold text in the affected paragraphs):

Exemption order respecting certain third-language television undertakings

By this order, pursuant to subsection 9(4) of the *Broadcasting Act* (**the Act**), the Commission exempts from the requirements of Part II of the Act and any regulations made thereunder, those persons carrying on broadcasting undertakings of the class defined by the criteria set out below.

Purpose

The purpose of these television programming undertakings is to provide programming services in third languages to broadcasting distribution undertakings for distribution on a digital basis.

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament or any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking files information with the Commission specifying: the name of the service provider, the name under which the service operates, **the** ~~the broadcasting distribution undertaking(s) that distribute the service~~, the service's contact information, including mailing address, telephone number, fax number, email address, and website, and the operating language(s) of the service. In the case of a new undertaking, the above information is filed with the Commission when the undertaking is ready to commence operations.
4. The undertaking provides its programming service only to broadcasting distribution undertakings that distribute the service to subscribers solely on a digital basis.
5. Of the programming broadcast by the undertaking in each calendar week:

- (a) at least 90% of the programming on the main channel is in languages other than English, French, or a language of the Aboriginal peoples of Canada;
 - (b) at least 90% of any programming on the secondary audio programming channel is in a language other than English or French; **and**
 - ~~(c) less than 40% is in any of the languages of Cantonese, Greek, Hindi, Italian, Mandarin or Spanish; and~~
 - (c) not less than 15% of all programs qualify as a Canadian program in accordance with the criteria established by the Commission in *Certification for Canadian programs – A revised approach*, Public Notice CRTC 2000-42, 17 March 2000, as amended from time to time.
6. The undertaking broadcasts at least one self-identifying notice per day, during a period of peak viewing, providing the name of the service and information on how viewers or other interested parties may contact its operator.
 7. The undertaking does not broadcast more than twelve (12) minutes of advertising material during each clock hour, of which no more than six (6) minutes may consist of local advertising.
 8. The undertaking's programming complies with sections 3, 3.1 and 6 of the *Specialty Services Regulations, 1990*.
 9. The undertaking's programming complies with section D.3 (Adult programming) of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as well as with the *Equitable Portrayal Code*, the *Broadcast code for advertising to children*, and the *Violence Code*, as amended from time to time and approved by the Commission.
 - 10. The undertaking ensures that every commercial message that it broadcasts complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.**
 11. The undertaking retains a clear and intelligible audio-visual recording of all of its programming for a period of four weeks following the date of broadcast, and **shall provides** this to the Commission on such terms as the Commission may request.
 12. At the request of the Commission, the undertaking provides the Commission with a response to any inquiry that relates to the undertaking.
 - 13. The undertaking does not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.**